

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGANCharles Witham #732101

(Enter above the full name of the plaintiff(s), including prisoner number, in this action. If you cannot list all plaintiffs in the space provided, please write "see attached" and list all names on an additional page.)

FILED - GRMay 23, 2024 12:52 PM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY:JMW SCANNED BY: AB/5/23

v.

UNKNOWN PILOT LEVARD);
UNKNOWN BENNICKSON LEVARD);
KATHERINE WEST (NURSE).**1:24-cv-537****Sally J. Berens****U.S. Magistrate Judge**

(Enter above the full name of the defendant(s) in this action. If you cannot list all defendants in the space provided, please write "see attached" and list all names on an additional page.)

COMPLAINT
(Print Clearly)**I. Previous Lawsuits**

CAUTION: The Prison Litigation Reform Act has resulted in substantial changes in the ability of incarcerated individuals to initiate lawsuits in federal courts without prepayment of the civil action filing fee. Accurate and complete responses are required concerning your litigation history. Generally, a plaintiff's failure to accurately and completely answer the questions set forth below will result in denial of the privilege of proceeding *in forma pauperis* and require you to pay the entire \$405.00 filing fee regardless of whether your complaint is dismissed.

- A. Have you ever filed a lawsuit while incarcerated or detained in any prison or jail facility? Yes ☐ No ☒
- B. If your answer to question A was yes, for each lawsuit you have filed you must answer questions 1 through 5 below. Attach additional sheets as necessary to answer questions 1 through 5 below with regard to each lawsuit.
1. Identify the court in which the lawsuit was filed. If it was a state court, identify the county in which the suit was filed. If the lawsuit was filed in federal court, identify the district within which the lawsuit was filed.
N/A
 2. Is the action still pending? Yes ☐ No ☒
 - a. If your answer was no, state precisely how the action was resolved: N/A
 3. Did you appeal the decision? Yes ☐ No ☒
 4. Is the appeal still pending? Yes ☐ No ☒
 - a. If not pending, what was the decision on appeal? N/A
 5. Was the previous lawsuit based upon the same or similar facts asserted in this lawsuit? Yes ☐ No ☒
 - a. If so, explain: N/A

II. Parties**A. Plaintiff(s)**

Enter your name, place of confinement, address, and place of confinement during the events described in the complaint in the blanks below. Provide the same information for any additional plaintiffs. Attach extra sheets as necessary.

Name of Plaintiff Charles Witham
 Place of Present Confinement Bellamy Creek Correctional Facility
 Address 1727 W. Bluewater Hwy., Poncha, NE 18346
 Place of Confinement During Events Described in Complaint Poncha, NE

B. Defendant(s)

Complete the information requested below for each defendant in this action, including whether you are suing each defendant in an official and/or personal capacity. Provide the same information for each additional defendant. If there are more than six defendants attach extra sheets as necessary.

Name of Defendant #1 "see Attachment"

Position or Title _____

Place of Employment _____

Address _____

Official and/or personal capacity? _____

Name of Defendant #2 "see Attachment"

Position or Title _____

Place of Employment _____

Address _____

Official and/or personal capacity? _____

Name of Defendant #3 "see Attachment"

Position or Title _____

Place of Employment _____

Address _____

Official and/or personal capacity? _____

Name of Defendant #4 _____

Position or Title _____

Place of Employment _____

Address _____

Official and/or personal capacity? _____

Name of Defendant #5 _____

Position or Title _____

Place of Employment _____

Address _____

Official and/or personal capacity? _____

III. Statement of Claim

State here the facts of your case. Describe how each defendant is personally involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Do not include unrelated claims. Use as much space as you need. Attach extra sheets if necessary.

Plaintiff Witham
 is AN AMPUTATEE PRISONER WITH "ONE ARM"
 DURING A MEDICAL RUN, WHILE BEING TRANS-
 FERRED TO HEALTH CARE, WORE HIS TWO-ARMED
 WINTER COAT PROVIDED BY THE STATE CORRECTION
 DEPARTMENT. HOWEVER DURING THE TRANSFER C/O
 PIKOFF BEGAN TO TAKE THE "LEFT SLEEVE OF
 THE COAT AND "SMACK WITHAM ON THE BUTT," ETC.
 REPEATEDLY WHILE MAKING "SEXUAL REMARKS"
 W/ GUARD BENNICKSON. SUCH REMARKS AND
 FURTHER VIOLATED THE 14TH, 14TH AMENDMENTS
 OF THE UNITED STATES CONSTITUTION; AND THE
 AMERICAN DISABILITIES ACT.

" SEE MORE W/ ATTACHMENT "

West (Nurse) SHE'S BEING SUSPENDED BECAUSE WHEN
 I WAS ATTEMPTING TO SEEK HEALTH CARE / TREATMENT
 WEST BEGAN TO DISCLOSE MY MEDICAL RECORDS W/
 C/O PIKOFF WHO THEN BEGAN TO TAUNT ME. THESE
 ARE VIOLATIONS OF HIPAA ACT ANALOGOUS TO MEDIC
 POLICY 04.03.000 AS WELL.

" SEE MORE W/ ATTACHMENT "

IV. Relief

State briefly and precisely what you want the court to do for you.

Witham seek \$300,000 (Three Hundred Thousand Dollars) in monetary damages; Witham also seek jury trial for all defendants. In addition, Witham seek injunctive relief in the form of HIPAA enforcement and proper placement for service medical need.

V. Notice to Plaintiff Regarding Consent

In accordance with the provisions of 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73, you are hereby notified that the United States magistrate judges of this district court may, upon your consent, conduct any or all proceedings in this case, including a jury trial and entry of a final judgment. If you consent, any appeal from a judgment entered by a magistrate judge shall be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Magistrate judges have greater flexibility in their schedules than district judges, who have heavy criminal caseloads that take priority over civil trials. Accordingly, the magistrate judges are generally able to schedule prisoner civil rights cases for jury trial much sooner, and they are able to provide firm trial dates. Magistrate judges are experienced trial judges who handle a great number of prisoner civil rights cases.

Your decision to consent to the dispositive jurisdiction of a United States magistrate is entirely voluntary. If you do not consent to a magistrate judge, the case will be randomly assigned to a district judge. The magistrate judge already assigned to this case would continue to decide all pretrial matters and would handle all dispositive motions by report and recommendation.

Please check **ONE** box below to indicate whether you voluntarily consent to proceed with a United States magistrate judge or if you would instead prefer that the case be assigned to a district judge.

☒ I hereby voluntarily consent to the United States magistrate judge conducting all proceedings in this case, including entry of a final judgment and all post-judgment matters.

☐ I request that this case be assigned to a district judge.

5-15-24

Date

Signature of Plaintiff

NOTICE TO PLAINTIFF(S)

The failure of a *pro se* litigant to keep the court apprised of an address change may be considered cause for dismissal.

The United States District Court
Western District
Northern Division

Charles Witham #732101

Plaintiff (improper)

V.

CASE NO. _____

UNKNOWN Piggott (guard);

UNKNOWN BENNICKSON (guard);

KATHERINE WEST (nurse);

Defendants.

"jury trial &
injunctive relief
demanded."

AMERICAN DISABILITY ACT

42 U.S.C. § 12132

HEPPA ACT, 42 U.S.C. § 1983

Plaintiff Charles Witham is a HANDICAPPED prisoner due to "ONE ARM". HE CLEARLY QUALIFIES UNDER ADA, AND 29 U.S.C. § 706(17)(18) AS A PERSON WITH A PHYSICAL OR MENTAL IMPAIRMENT, THAT LIMITS ONE OR MORE MAJOR LIMITS ON LIFE. HOWEVER, HEREIN DEFENDANTS WHO ACCEPT AND RECEIVE FEDERAL FUNDING CONDUCT REPEATEDLY VIOLATE FEDERAL LAW AND DEFENDANTS CONSTITUTIONAL RIGHTS AS WELL.

1. Jurisdiction: 42 U.S.C. § 1983, 28 U.S.C. §§ 1331 AND 1334; 28 U.S.C. § 1351.

2. All Defendant's Acted under color of State Law.

3. All Defendant's Are being sued in their "individual"; AND "Official" Capacity due to ADA CLAIMS.

4. No Habeas Corpus ~~NOT~~ AVAILABLE.

5. Plaintiff Witham seek Monetary or Compensatory Damages; AND Injunction Relief in the form of "Medical Record" Confidentiality AND placement to serve his Handicap.

6. Parties: Plaintiff Charles Witham #732101, A PRISONER, CAN BE LOCATED AT Bellamy Creek Correctional Facility, 1227 W. Bluewater Hwy., Jonia, MI 48846.

7. Defendant's UNKNOWN Piggott (GUARD); UNKNOWN BENNIKSON (GUARD); AND Katherine West (NURSE), CAN BE LOCATED AT Bellamy Creek Correctional Facility, 1227 W. Bluewater Hwy., Jonia MI 48846.

Statement of Facts

8. ON/AROUND the WEEK of February 12, 2024 Plaintiff Witham (Hereafter "Witham") HAD A DENTAL APPOINTMENT, AND WAS ESCORTED to this DENTAL APPOINTMENT by both Defendant Pibbott AND BENNICKSON who were guards. During transporting Witham Pibbott began to take the left empty sleeve and first "SWANK" Witham "Butt" (ASS) AND SAY OVER AND OVER that ASS IS MINE'S!"

9. Pibbott then took the left empty sleeve and put AROUND Witham's NECK stating "I CHOKE my Pitches too!"

10. Witham HAVE NO left ARM, HOWEVER, WAS BELLY-CHAINED WITH HIS ONLY RIGHT ARM ATTACHED to HIS BODY WITH BELLY CHAINS.

11. Defendant BENNICKSON cheered on the behavior AND SEXUAL ASSAULT being committed AGAINST Witham AND SAID: "I'd tell you, this Boy looks to HAVE some GOOD ASS!" AT NO RELEVANT time did BENNICKSON stop Pibbott from SWANKING Witham on HIS BUTT or pulling the ARMLESS SLEEVE AROUND Witham's NECK.

12. After returning from the DENTAL APPOINT -

Men of Pibbott continued his sexual desire with Witham, so Witham filed a PRA; PRA MEANS: PRISONERS RAPE ELIMINATION ACT. AND WITHAM filed several complaints with prison WARDEN. HOWEVER, NOTHING SEEMED to get in Pibbott's way or stop Pibbott from what he wanted.

13. Witham began to record Pibbott's Acts of Sexual Abuse:

ON 2/24/24 AT 8:20 AM, COMMENT: ("YOU HAVE pretty eyes"); 10:42 AM I TAKE DOWN your COVER off the window (BABY); 1:20 PM ("Why you Acting like that Come on Now"); 1:22 PM ("Come right back smile at me"); 1:42 PM ("See you tomorrow").

ON 2/25/24 (the very next day) AT 1:29 PM COMMENT: "I BEEN busy on my wing. I'm still HERE BABY?"

ON 2/26/24 (the very next day) AT 1:11 PM COMMENT: "WHAT HAVE I DONE? THIS HOW YOU do me?"

ON 2/28/24 AT 8:41 AM Pibbott

BANG on Door, SAYS "DADDY'S HERE,
COME HERE BABY". At 11:10 AM
RETURN SAYS: "WHAT'S WRONG WITH YOU?"

2/29/24 9:40 AM comment: "You need
anything?", at 9:43 AM come back to
cell comment: "If I HAVE to take it
off, I CAN make it off for you!"

3/2/24 At 11:00 AM, 11:04 AM, 11:05
AM, 12:37 AM, 1:33 AM camera
evidence show Pittbott's strong pursuit.

3/4/24, Pittbott's return, comment:
Who are you telling me? Are you being a
switch, 20 years ago I would HAVE
HAD you in my arms by now! (SIC). At
11:05 AM

3/8/24 At 8:40 AM, 9:23 AM, 11:45 AM,
1:03 PM, 1:32 PM, Pittbott appears to
be agitated and becomes threatening,
saying "OKAY" you won't be going home
anytime soon!"

14. C/O Pittbott is not (emphasis added) is not
the guard appointed to Witham's tier at no time.

15. Witham recorded as many incidents as he can hoping during an Department investigation video evidence would support proofs of Pigbott's strong sexual pursuit w/ Witham.

16. On/Around April 16, 2024 Pigbott is at Witham's door, camera shows he violently slammed window shutter.

17. Witham generated and filed PREA for an investigation to be lodged. However, moreover, not one time was Witham interviewed.

See, Exhibit 1
PREA investigation

18. Not during the investigation no witnesses interviewed, not no camera evidence describing the initial act when C/O Pigbott swanked Witham's butt.

19. On/Around March 2, 2024 Pigbott threatened to push back Witham ERID (earliest release date) Witham immediately filed grievance # 2130557-282, but was "Rejected" Modified Access.

HIPPA Act

20. On/around February 23, 2024 Witham placed in his door a medical kite to Nurse West, instead Pibbott take the medical out the door so the Nurse West allowed him to do so; Pibbott began to read the medical kite, Witham's medical information out loud?

21. In Witham's medical kite, he seek to be placed in MAT PROGRAM which is a program to cure illegal drug Addictions. Witham believed since the ADA recognize "Drug Addiction" as a Disability he could sought a form of treatment.

22. Pibbott, however, read the medical kite out loud to be heard throughout the floor. Nurse West laughed and laughed; And then Pibbott said: "West is seeing you now! She said no!"

23. Witham filed grievance # JBL-0505-284, and the grievance was rejected at Step 1.

24. Witham never was evaluated for MAT programs

Retaliation

25. As a result of Witham generating grievance

#062 0505-282, pibbott fabricated a misconduct of disobeying direct order (D.D.O.). During the hearing Witham presented overwhelming and strong evidence the misconduct was totally exaggerated. E.g.:

The camera show C/o pibbott at Witham's cell at 8:10 AM;

However, C/o pibbott claim the incident occurred at 9:00 AM.

The truth is no incident occurred at all and the D.D.O. A class II misconduct do not allow for prisoners hearing investigator, witnesses or video evidence.

26. Witham was sentence to 30 days loss of privileges (no yard, phone, or leisure time). The U.S. Supreme Court in Sandin v. Conners, held when a prisoner is subject to 30 days of sanction he has a "liberty interest" to an formal hearing. C/o pibbott knowing "no investigation" exist under a class II misconduct but 30 days sanction is the max penalty consistently rendered.

27. C/o pibbott, even today threaten prisoners who could be witnesses with class II misconducts knowing "he can write charges without an adversary process or test objectively provided." APPEND DENTED.

LEGAL CLAIMS:

CLAIM I.

28. Plaintiff Witham, re-Alleges ¶ 8-20, AND AVERs DEFENDANTs Pibbott AND BENNICKSON DID MALICIOUSLY AND BADLY INTENTEDLY VIOLATE PRISONER RAPE ELIMINATION ACT (PREA); AND DID VIOLATE AMERICAN DISABILITIES ACT (ADA); AND DID VIOLATE THE 4th (SECURED IN PERSON) AND 14th (EQUAL PROTECTION OF LAW) AMENDS. OF U.S. CONSTITUTION BY THEIR ACTS OF SEXUAL MISCONDUCT, SEXUAL ASSAULT, AND "DISCRIMINATION" OF SERVICES AND PROGRAMS.

CLAIM II.

29. Plaintiff Witham, re-Alleges ¶ 20-24, AND AVERs DEFENDANTs Pibbott AND West DID MALICIOUSLY AND BADLY INTENTEDLY VIOLATE HIPAA ACT WHEN: EXPOSING MEDICAL RECORDS TO NON-MEDICAL STAFF INCLUDING OTHER PRISONERS FOR REQUEST OF MAT PROGRAM, CONTRARY TO ADA, EQUAL PROTECTION OF LAWS UNDER THE 14th AMEND. OF UNITED STATES CONSTITUTION.

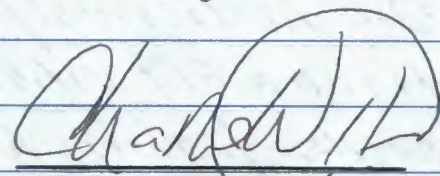
CLAIM III.

30. Plaintiff Witham, Re-Alleges ¶¶ 25-27, AND AVERs, Defendant Ribbott did maliciously and badistically Retaliated/When: Generating an exaggerated misconduct due to Witham Writing a Grievance, Contrary to the 1st Amend. Right to Redress of the U.S. Const.

PRAYER UPON RELIEF

- A. Jury Trial Demanded.
- B. Grant Injunctive Relief in the form of placement in medical facility.
- C. Award Monetary Damages in "official" capacity for ADA CLAIMS; AND Damages "individually" for the remaining claims, compensatory damages.

DATED: MAY 15, 2024

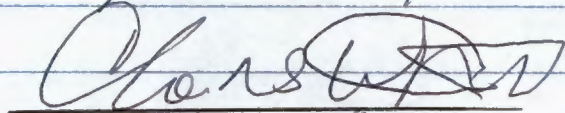

CHARLES WITHAM
#732101

Verification

I HAVE READ the foregoing complaint AND
HEREBY VERIFY that the matters alleged therein

Are true, except as to matters alleged
in information and belief, and as to
those, I believe them to be true. I
certify under the penalty of perjury that
the foregoing is true and correct.

Executed at Jonia, Michigan
on May 15, 2024



CHARLES WITHAM # 732101

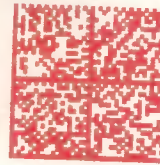
Charles Witham

NQ. 732107

Bellamy Creek Correctional Facility

1727 W. Bluewater Hwy.

Yonkers, NY 10710



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110 Michigan N.W. 3F.
Grand Rapids, MI 49503

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